



MAILING ADDRESS
IDAHO REAL ESTATE COMMISSION
PO BOX 83720
BOISE ID 83720-0077
www.idahorealestatecommission.com

STATE OF IDAHO
REAL ESTATE COMMISSION

OFFICE & EXPRESS MAIL ADDRESS
633 N 4TH ST, BOISE ID 83702
TEL: (208) 334-3285; FAX: (208) 334-2050
TRS 1 (800) 377-3529
1 (866) 447-5411 within Idaho

Assigned Agency

QUESTIONS & ANSWERS

The following questions and answers have been developed to assist licensees in complying with the provisions of the new Assigned Agency law. These answers are intended to address general situations only and are not intended as legal opinions. Licensees should consult their attorneys for legal advice concerning the new law's effect on their brokerage practices.

What & Why Questions

Question: When the Assigned Agency law goes into effect, will brokerage offices be *required* to offer this new type of agency representation?

Answer: No. Effective July 1st, brokerage offices will have *the option* of offering a new, *additional* type of agency representation. The new law does not eliminate or otherwise change any of the already existing types of agency relationships. **All the old options are still available:** Non-Agency; Single Agency; and Limited Dual Agency. Now, you have one more to work with: Assigned Agency

Question: In an in-house transaction, licensees in the same brokerage can already represent both buyer and seller by acting as Limited Dual Agents. Why would a brokerage want to offer Assigned Agency?

Answer: With Assigned Agency, a brokerage will be able to provide clients a higher level of service. Its licensees can go to bat for the client to whom they're assigned, instead of remaining neutral. For example, a licensee assigned to represent the buyer *can* give an opinion as to whether that client is getting a good deal, and *can* recommend buyer-favorable conditions be included in the purchase and sale agreement. By comparison, a Limited Dual Agent is prohibited from promoting the interests of the client he or she is working with over the interests of the other client.

Question: I am the Designated Broker of a small brokerage. Can Assigned Agency work in my office?

Answer: Legally, yes. Assigned Agency is permitted so long as there are at least three licensees in the brokerage – a designated broker and two sales associates.

Question: What must my brokerage do before it offers Assigned Agency as part of its real estate services?

Answer: Aside from having the requisite number of licensees (three), the brokerage must develop a written office policy.

The Office Policy on Agency

Question: What specific requirements must be included in the office policy?

Answer: An office policy must be in writing, and must identify and describe the types of representation offered by the brokerage to buyers, sellers, or both, as part of that office's real estate services. If the brokerage offers Assigned Agency, the policy must ensure that client confidences will be maintained.

***Question:* How does an office policy ensure that client confidences will be maintained?**

Answer: The statute provides no specific direction. Companies of any size can face problems if the issues of confidentiality and conflicts of interest are not adequately addressed. In developing the office policy on Assigned Agency, the broker may wish to evaluate where the office stands on the following types of questions:

- a. Should husband and wife licensees be assigned to represent different parties in the same transaction?
- b. Should different members of a real estate team be assigned to represent different parties in a transaction?
- c. Should a licensed real estate assistant be assigned to represent one party in a transaction while the agent for whom he or she works represents the other?

In any case, licensees will need to take more care to maintain their clients' confidential information, and may even have to refrain from sharing such information with *any* sales associates, who could wind up being assigned to represent another client on the same property.

***Question:* How does the broker go about assigning agents?**

Answer: Again, the law provides no specific direction. However as a practical matter, designated brokers have several alternate ways in which to assign agents.

- a. The broker may directly assign agents on a *case-by-case basis* whenever a licensee in the firm shows a buyer-client property listed with another licensee in the firm. This might be impractical in larger firms, and the broker may choose to delegate to other management level personnel the responsibility for assigning agents; or
- b. The broker may choose to adopt a *company-wide* policy implementing the practice of assigned agency. This should be done in a way to ensure that each client is represented properly under the law.

Policies on Assigned Agency will no doubt vary from office to office. Whatever policy the broker adopts, the policy should be included in the policies and procedures of the brokerage firm, and given to every licensee in the company.

***Question:* If my office chooses to offer Assigned Agency, when must my broker have the written office policy in place?**

Answer: A brokerage must have a written office policy in place prior to offering Assigned Agency, which is any time on or after July 1, 2004. Keep in mind that this change in representation is only an option and there is no requirement that any office offer this.

***Question:* If my office chooses not to offer Assigned Agency, does this have to be noted in our office policy?**

Answer: No, it is not necessary to add this to your existing office policy.

Variations on Agency Relationships

***Question:* I have the buyer and the seller in the same transaction and both of them have signed a written agreement allowing Assigned Agency. May I continue to represent them both?**

Answer: Yes. However, you **MUST** remain a Limited Dual Agent to both clients.

***Question:* I have the buyer and the seller in the same transaction and both of them have signed a written agreement allowing Assigned Agency. Is Assigned Agency an *option* here?**

Answer: Yes. Your Designated Broker *can* assign a different sales associate in your firm to act solely on behalf of one of the clients, which would allow you to continue to represent the other one. That decision will depend on whether you have obtained any confidential information (bargaining information) on the client you would not be representing.

Your Designated Broker should proceed cautiously before authorizing assigned agency in these circumstances. In working with both the buyer and the seller, it is likely that you have gained confidential information from both. If you have, the broker should allow only Limited Dual Agency. However, if the client about whom confidential information is known agrees, in writing, you may represent the other party as an Assigned Agent.

Question: I am the Designated Broker in my office. How do I handle the transactions for which I am the listing agent?

Answer: Agency law specifies that you, as the Designated Broker, shall not act as an Assigned Agent. If you represent a client in an in-house transaction, you *must* act as a Limited Dual Agent.

Question: I am the designated broker and the listing agent. Can I assign another agent in the company to act as the seller's assigned agent?

Answer: Yes. With the express written consent of the buyer and the seller clients involved in the transaction, you *could* assign separate sales associates to each client, to represent and act solely on behalf of each client. You would remain a Limited Dual Agent in the transaction.

Question: What should I do if the buyer-client agrees to Assigned Agency and the seller-client of the same brokerage has agreed to single agency only?

Answer: Because the seller has not agreed to any agency relationship other than single agency, the seller's property should not be shown to any buyer that has a relationship with the brokerage, except a non-agency relationship.

Question: If my office chooses to offer Assigned Agency, will this mean that I cannot "double-end" a transaction?

Answer: No. If both parties are clients, you may continue to represent them, acting as a Limited Dual Agent to each. However, you cannot act as an Assigned Agent in the transaction. And, of course, if either of the parties is a customer and not a client, you may work with that party as a Non-agent.

Question: In an in-house transaction, may a licensee work with one party as an Assigned Agent while working with the other as a Limited Dual Agent?

Answer: No. The statute requires that the broker assign a sales associate "to each client." This means both parties must have an assigned agent.

Personal Transactions

Question: I work in an office that offers Assigned Agency, and I want to buy and sell properties for myself. Must my broker assign a different agent to represent its other clients in these transactions?

Answer: Only if you have a Representation Agreement that allows Assigned Agency, and the other party does, too.

If both of you have agreed to Assigned Agency, and if the agent to be assigned is in a position to advocate the other party's interests over yours, and has not obtained confidential information about your bargaining position, then Assigned Agency may have an advantage to all by allowing full representation to all parties to the transaction.